

**Young v City of New York**

2016 NY Slip Op 30665(U)

April 12, 2016

Supreme Court, New York County

Docket Number: 159309/14

Judge: Lynn R. Kotler

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 5**

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CHARLES YOUNG,

Plaintiff (s),

**-against-**

THE CITY OF NEW YORK, POLICE OFFICER  
DOUGLAS LEE, SHIELD #6978, and POLICE OFFICERS  
JOHN DOES #1-4 (NAMES AND NUMBER OF WHOM  
ARE UNKNOWN AT PRESENT), and OTHER  
UNIDENTIFIED MEMBERS OF THE NEW YORK CITY  
POLICE DEPARTMENT,

Defendant (s).  
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**DECISION/ ORDER**  
Index No.: 159309/14  
Seq. No.: 001

**PRESENT:**  
Hon. Lynn R. Kotler  
**J.S.C.**

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

<b>Paper</b>	<b>Numbered</b>
Def's n/m, JH affirm, exhs.....	1
SEJ affirm in opp.....	2
JS reply affirm.....	3

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*Upon the foregoing papers, the decision and order of the Court is as follows:*

This personal injury action arises from plaintiff's arrest on July 11, 2013. Defendants are The City of New York (the "City"), Police Officer Douglas Lee, Shield #6978 ("PO Lee") and Police Officers John Does #1-4 (Names and Number of whom are unknown at present), and other unidentified members of the New York City Police Department. The City now moves for an order dismissing plaintiff's second through seventh causes of action and the eighth and ninth causes of action to the extent that they sound in State law, for failing to submit to a demand for examination, pursuant to CPLR § 3211[a][7] & GML § 50-h and 50-i. The City alternatively moves to dismiss plaintiff's third through seventh causes of action for failure to file a timely

notice of claim (CPLR § 3211[a][7] and GML §§ 50-e, 50-i) and because they are time barred (CPLR § 217-a and GML § 50-i). The City also moves to dismiss plaintiff's fifth, sixth and seventh causes of action "for failing to bring a cognizable claim" (CPLR § 3211[a][7]). Finally, the City moves to dismiss plaintiff's 42 USC § 1983 claims (CPLR § 3211[a][7]).

While the City's original answer was not filed with the court, it was annexed as an exhibit to its motion. The City only answered on behalf of itself and not on behalf of PO Lee or any of the other unidentified defendants. The City filed an amended answer on its behalf as well as PO Lee on December 3, 2015. However, this answer was filed after the instant motion was filed and given that the notice of motion only identifies that the City is seeking relief on its own behalf, the court will not consider the City to have moved for any relief on behalf of PO Lee or the other unidentified defendants.

In his complaint, plaintiff alleges that on November 23, 2012, at approximately 3:00 am, he was lawfully walking towards the Number 1 train on Christopher Street in New York, New York. Upon information and belief, the individual defendants received a complaint that a cell phone and wallet had been stolen at Bedford Street and Grove Street in Manhattan. As plaintiff was walking, the defendant police officers "grabbed plaintiff, threw him up against a wall, and began to search him without reasonable suspicion or probable cause." The individual defendants did not recover any drugs, weapons, contraband, or the complaining victim's property from plaintiff. Thereafter, the defendant officers told plaintiff "he was free to leave." However, a few minutes later, the defendant officers approached plaintiff against and detained him without reasonable suspicion or probable cause. The complaining victim came to the scene and told the police officers that plaintiff was not the person that had robbed him. Nonetheless, the defendant officers handcuffed plaintiff and arrested him. Thereafter, plaintiff was transported to the 6<sup>th</sup>

precinct. He was fingerprinted, photographed and placed in a holding cell. The Defendant officers “falsely communicated” to the District Attorney's Office that plaintiff had committed a crime and plaintiff's prosecution ensued. Plaintiff was transported to Manhattan Central Booking.

On June 24, 2012, after over 36 hours in custody, plaintiff was arraigned and bail was set in the amount of \$7,500. Plaintiff could not post bail and was remanded to the Department of Corrections and transported to Rikers Island. Plaintiff had several court appearances, but the criminal charges against him were dismissed on June 25, 2013.

Plaintiff does not oppose the City's motion to dismiss his second cause of action (state law claim for false arrest and false imprisonment); the fifth cause of action (state law claim for negligent hiring, retention, training, and supervision); the sixth cause of action (state law claim for negligence); and seventh cause of action (state law claim for negligent infliction of emotional distress).<sup>1</sup> Accordingly, these claims are dismissed.

Plaintiff opposes the balance of the City's motion. Specifically, plaintiff argues that since the first, third, fourth and ninth causes of action are brought pursuant to 42 USC § 1983, the GML § 50-e notice requirements do not apply to these causes of action. Moreover, plaintiff maintains that he has filed a timely notice of claim with respect to his eighth cause of action for malicious prosecution. Plaintiff contends that the eighth cause of action should not be dismissed for failure to submit to a demand for examination as required by GML § 50(h) and 50(i). Finally, plaintiff maintains that the City's motion to dismiss his first, third, fourth, and ninth causes of action should be denied. Plaintiff clarifies that these claims are brought pursuant to 42 U.S.C. § 1983 and that they allege that his rights under the Fourth, Fifth, and Fourteenth Amendments of

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<sup>1</sup> The court rejects the City's' argument that plaintiff opposition is procedurally defective since it was not signed by an attorney. There is no indication that the affirmation was not in fact prepared by plaintiff's counsel and to there is no prejudice in considering plaintiff's opposition. Moreover, this motion was orally argued and any concerns that might arise as to whether plaintiff's counsel prepared and affirmed the opposition have been alleviated by said argument where defense counsel appeared.

the US Constitution were violated by the individual officers when they falsely arrested him, maliciously prosecuted him, unlawfully stopped him, denied him the right to fair trial, and failed to intervene on plaintiff's behalf to stop their fellow officers from violating plaintiff's rights under the United States Constitution.

To the extent that plaintiff concedes that he has not asserted any 42 USC § 1983 claims against the City, the City's motion to dismiss any 42 USC § 1983 claims against the City is granted.

Since the City only moved for relief on behalf of itself and did not appear on behalf of the individual defendants prior to making the motion, the City's motion to dismiss the first, third, fourth and ninth cause of action pursuant to 42 USC § 1983 against the individual police officers must be denied. To the extent that the City argues that the complaint is impermissibly vague and/or fails to contain sufficient allegations to support a federal cause of action, the court largely rejects this argument. On a motion to dismiss pursuant to CPLR § 3211, the pleading is to be afforded a liberal construction (*Leon v. Martinez*, 84 NY2d 83 [1994]). The court must accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*id.* citing *Morone v. Morone*, 50 NY2d 481 [1980]; *Rovello v. Orofino Realty Co.*, 40 NY2d 633 [1976]).

Pursuant to 42 USC § 1983

[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

Thus, “a person has a private right of action under 42 USC § 1983 against police officers who, acting under color of law, violate federal constitutional or statutory rights” (*Delgado v City of New York*, 86 AD3d 502, 511 [1st Dept 2011]). Here, at this stage of the litigation, plaintiff has alleged sufficient facts to state that his constitutional rights were violated by the individual officers when they falsely arrested him, maliciously prosecuted him, unlawfully stopped him, and denied him the right to fair trial. As for the alleged failure to the individual defendants to intervene on plaintiff’s behalf to stop their fellow officers from violating plaintiff’s constitutional rights, that is not a cognizable claim (see i.e. *Azzarella v. The City of New York*, 2014 WL 5364549 [Sup Ct Bx Co]). Therefore, the third cause of action must be dismissed, *sua sponte*. As for the fourth cause of action, while plaintiff has alleged that the unlawful stop deprived him of his rights under the laws of the State of New York, the court deems this language superfluous in light of plaintiff’s allegation that he was stopped by the defendant police officers “without... other constitutionally required grounds.” These allegations are sufficient to put defendants on notice of plaintiff’s 42 USC § 1983 claim against the individual police officers for unlawfully stopping him.

As for the eighth cause of action, for malicious prosecution under state law, there is no dispute that plaintiff timely filed notice of claim as to this state law claim. However, the City maintains that plaintiff failed to appear at a 50-h hearing and therefore this claim must be dismissed. However, plaintiff properly adjourned the 50-h hearing, and requested that the 50-h hearing be re-scheduled and the City failed to re-schedule the 50-h hearing for a date certain. Accordingly, the City’s motion to dismiss the malicious prosecution claim for failure to comply with GML § 50-h is denied.

**Conclusion**

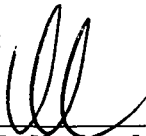
In accordance herewith, it is hereby

**ORDERED** that the City's motion is granted to the following extent: [1] to the extent that plaintiff has alleged a cause of action pursuant to 42 USC § 1983 against the City, that cause of action is severed and dismissed; and [2] the second, third, fifth, sixth and seventh causes of action are severed and dismissed.

It is further **ORDERED** that the City's motion is otherwise denied.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

Dated: April 12, 2016  
New York, New York

So Ordered:   
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Hon. Lynn R. Kotler, J.C.C.